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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,763	01/26/2004	David A. Goodmanson	8893-000003	1920
27572	7590	07/09/2004	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 07/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/765,763	<b>Applicant(s)</b> GOODMANSON, DAVID A.	
	<b>Examiner</b> Lien T Tran	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 26 January 2004.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 23-51 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☒ Claim(s) 30-37 is/are allowed.

6) ☐ Claim(s) 23,24,27,28,32,33,38-44, 47,48 and 44-51 is/are rejected.

7) ☒ Claim(s) 25,26,29 is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_.

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Claims 27,28,32,33, 38-40, 44, 47 and 48 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the preliminary amendment filed 1/26/04, applicant adds these new claims. The limitations in these claims are not found in the specification or the original claims. The preliminary amendment is not part of the original disclosure because the oath/declaration does not refer to the amendment.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The limitations recited in claims 23, 37,45,46 and the term about in front of the sugar amount in claim 26 are not found in the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 23,24, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline in view of Silva

Moline discloses a dough comprising flour, fat, salt, sugar, baking powder, yeast and water. The dough also comprises trimmings from the dough. The trimmings are compacted into a dough and blended into the mixed dough. Moline discloses that when the dough web is dived into dough shells and dough trimming, approximately 30% of the dough web becomes scraps. The reclamation system disclosed provides means to utilize the blending of dough scraps back into the mixed dough. (see col. 4 and col. 8 lines 32-40)

Moline does not disclose the amounts of ingredients as claimed and adding a catalyst.

Silva discloses a fermentation aid which comprises flour and sugar. Additional ingredients such as sugar, enzyme, dextrose, corn syrup etcc... can be added. (See columns 3 and 7). The fermentation aid is equivalent to the claimed catalyst because it enhances fermentation which is what a catalyst does.

While Moline does not disclose reprocessed batter, the difference between the batter and the dough trimmings is only in the terminology because the batter is made from rework dough which is the same as the dough trimming. As to the amounts, the amount of fresh ingredients depends on the type of dough made and this can vary. As to the amount of rework dough, the system disclosed by Moline incorporates all the

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scraps or trimmings back to the dough; thus, if more trimmings are generated, then more of the trimmings can be added to the mixed dough. Thus, it would have been obvious to add varying amount of trimmings depending on the amount that is generated. It would also have been obvious to add the fermentation aid taught by Silva to the dough of Moline to reduce fermentation time which will quicken the process.

Claims 25,26,29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 25-29 are free of prior art because the prior art does not teach forming the dough trimming into reprocessed batter comprising a catalyst, water and rework dough. Claims 39-44 are free of prior art because Silva does not disclose a fermentation aid comprising about 90 parts sugar, 9 parts wheat gluten and 1 part enzyme.

Claims 30-37 and 45-51 are free of prior art for the same reason set forth for claims 25-29.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 45-51 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-21 of U.S. Patent No. 6743457. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the patent and the instant application are directed to a reprocessed batter comprising rework dough, water and a catalyst. The difference resides in the amount of rework dough used. This difference is not patentably significant because it would have been obvious to use any varying amount of rework dough depending on the type of dough made.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kieffaber disclose a method of making a uniform dough mixture containing scrap dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 7, 2004

  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1700